

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CHARLES WATSON,

Plaintiff,

v.

ORDER
08-CV-960A

SUPERINTENDENT RONALD MOSCICKI
Superintendent, Lakeview Correctional Facility,

Defendant.

Plaintiff has applied to the Court for appointment of counsel pursuant to 28 U.S.C. § 1915(e). There is no constitutional right to appointed counsel in civil cases. However, under 28 U.S.C. § 1915(e), the Court may appoint counsel to assist indigent litigants. See, e.g., Sears, Roebuck & Co. v. Charles W. Sears Real Estate, Inc., 865 F.2d 22, 23 (2d Cir. 1988).

Assignment of counsel in this matter is clearly within the judge's discretion. In re Martin-Trigona, 737 F.2d 1254 (2d Cir. 1986). The factors to be considered in deciding whether or not to assign counsel include the following:

1. Whether the indigent's claims seem likely to be of substance;

2. Whether the indigent is able to investigate the crucial facts concerning his claim;
3. Whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder;
4. Whether the legal issues involved are complex; and
5. Whether there are any special reasons why appointment of counsel would be more likely to lead to a just determination.

Hendricks v. Coughlin, 114 F.3d 390, 392 (2d Cir. 1997); see also Hodge v. Police Officers, 802 F.2d 58 (2d Cir. 1986). The Court must consider the issue of appointment carefully, of course, because "every assignment of a volunteer lawyer to an undeserving client deprives society of a volunteer lawyer available for a deserving cause." Cooper v. A. Sargenti Co., 877 F.2d 170, 172 (2d Cir. 1989).

The Court has reviewed the facts presented herein in light of the factors required by law. Plaintiff appears to be an intelligent and capable *pro se* litigant who so far has done an admirable job of litigating his case.

Accordingly, based on this review , plaintiff's motion for appointment of counsel is denied without prejudice at this time. It is the plaintiff's responsibility to retain an attorney or press forward with this law suit *pro se*. 28 U.S.C. § 1654. In order to assist plaintiff in pursuing this case *pro se*, the Clerk of the Court is directed to send plaintiff copies of the Court' s booklet entitled Pro Se Litigation Guidelines and the Manual for Inmate Litigants.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: January 4, 2010